

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF THE PETITION OF SUSSEX COUNTY,)
DELAWARE REGARDING METHOD OF) PSC DOCKET NO. 19-0146
NOTICE TO LANDOWNERS ("ELLENDALE)
AND WINDING CREEK"))
(FILED MARCH 13, 2019))

ORDER NO. 9364

AND NOW, this 2nd day of April 2019, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, pursuant to 26 *Del. C.* § 203C(a), no person or entity (including municipalities, governmental agencies, and water authorities and districts created under Title 9 or Title 16) shall begin the business of a water utility nor shall any existing water utility begin any extension or expansion of its business or operations without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires, or will be served by, the operation of such business or the proposed extension or expansion; and

WHEREAS, pursuant to 26 *Del. C.* § 203C(c), an application for a Certificate of Public Convenience and Necessity ("CPCN") shall contain the information specified in subsection (d) or (e) of 26 *Del. C.* § 203C; and

WHEREAS, 26 *Del. C.* § 203C(d) and (e), requires that an application for a CPCN include evidence that all landowners of the proposed territory have been notified by certified mail, or its equivalent, of the filing of the application; and

WHEREAS, the Commission's "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities" (the

"Regulations") require that the notices required for a CPCN premised on 26 Del. C. § 203C(d) and (e)(1)B.1. or 4. be sent to landowner by United States Postal Service certified mail, return receipt requested, with delivery restricted to the addressee; and

WHEREAS, pursuant to 26 Del. Admin. C. § 2002-9.7, the Commission, by Order, may authorize a method of providing notice to landowners that is equivalent to the methods set forth in the Regulations; and

WHEREAS, on March 13, 2019, Sussex County ("County") submitted a petition with the Commission for an alternative equivalent method of notice to landowners of record for a CPCN to provide water service to areas known as Ellendale and Winding Creek; and

WHEREAS, the County filed its request for permission to use an alternative equivalent method of providing notice to landowners, noting the County posted, advertised and notified the residents via direct mail of the mandatory public hearing which had resulted in approval of creation of the water district in question; and

WHEREAS, the Commission considered the County's request at its March 19, 2019 meeting; and

WHEREAS, the County noted before the Commission that it is now limiting its request for an alternative method of notification to the area identified as Ellendale and that it intended to file for the CPCN for the Ellendale area pursuant to 26 Del. C. § 203C(d); and

WHEREAS, the County asserted that its previous notices of public hearings on this matter and the conducting of a referendum on this issue negated the need for further notification; and

WHEREAS, the County stated it was basing its request on 9 *Del. C.* § 6517, which provides that the County may, where it deems it necessary to the preservation of public health, order the owner of any lot within a water district to connect to the water main; and

WHEREAS, the County stated that if additional notice were to be required, notification through newspaper advertisements and by posting notice in four public places within the district should be adequate; and

WHEREAS, Staff argued that the law and regulation requiring public notice to be by certified mail, return receipt requested, with delivery restricted to the addressee should be followed and the County's request should be denied.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 *Del. C.* § 203C(d), and 26 *Del. Admin. C.* § 2002-9.3, the County's request for permission to use an alternative equivalent method of notice to landowners of the County's application for a CPCN is hereby denied.

2. The Commission finds that County's proposed method of notifying landowners is not equivalent to that required under 26 *Del. C.* § 203C and 26 *Del. Admin. C.* § 2002-9.3.

3. The County shall comply with any and all requirements of 26 *Del. C.* § 203C and 26 *Del. Admin. C.* § 2002-9.3 and notify all landowners of its application for a Certificate of Public Convenience and Necessity by certified mail, return receipt requested, delivery restricted to addressee.

4. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chairman

John J. Coraway

Commissioner

[Signature]

Commissioner

[Signature]

Commissioner

K. Dexter

Commissioner

ATTEST:

Donna Dickerson

Secretary

